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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/459,979 12/14/99 FERGUSON

M 39-196

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HM12/0731

EXAMINER
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JIANG, D	
ART UNIT	PAPER NUMBER

1646

DATE MAILED:

07/31/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

# Office Action Summary

Application No.

09/459,979

Applicant(s)

FERGUSON, MARK WILLIAM  
JAMES

Examiner

Dong Jiang

Art Unit

1646

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 17 May 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 33-38 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 33-38 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other: \_\_\_\_\_

### DETAILED OFFICE ACTION

Applicant's amendment in paper No. 6, filed on 17 May 2001 is acknowledged and entered. Following the amendment, the original claims 25-32 are canceled, and the new claims 33-38 are added. Currently claims 33-38 are pending and under consideration.

#### Withdrawal of Objections and Rejections:

All rejections of claims 25-32 are moot as the applicant has canceled the claims.

#### Formal Matters:

Claim 36 is objected under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. The claim depends from claim 33, which is directed to chronic wound, and is not further limited by claim 36, which clearly is not a chronic wound.

#### Objections and Rejections under 35 U.S.C. §112:

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 33-38 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 33 is indefinite for reciting "to effect said promotion", as it is not clear whether such is intended to mean to effect promotion, or healing, and how such promotion is evidenced.

Claim 36 is indefinite because it is unclear whether there is any preexisting chronic wound, or otherwise, the claim reads on an acute wound, and not a chronic one.

Claim 37 is indefinite because an inhibitor of IFN- $\gamma$  metabolism is not considered in the art to be an IFN- $\gamma$  stimulator.

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The remaining claims are rejected for depending from an indefinite claim.

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 33-35, 37 and 38 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

The claims are rejected under 35 U.S.C. 112, first paragraph for the same reasons addressed in the last office action (see the rejection of claims 25-32 under “*Rejections under 35 U.S.C. §112:*”). The same rejection applies for claims 33-35, 37 and 38 because the scope of the newly added claims remain unchanged, and it is directed to “a method for promoting the healing of *chronic* wounds comprising the use of a stimulator of IFN- $\gamma$ ”. However, the specification only discloses evidence of using IFN- $\gamma$  to treat acute surgical wounds by topical administration of IFN- $\gamma$ . Applicants argument, filed on 17 May 2000 (paper No. 6) has been fully considered. The applicant argues that a skilled person would readily appreciate that the finding that IFN- $\gamma$  increases fibrosis would mean that IFN- $\gamma$ , and stimulators thereof would be well suited to treating chronic wounds (page 4, lines 4-8), and that this *may be* effected by promoting fibrosis. This argument is not deemed persuasive because it is well known that chronic wounds involve many complicated reasons, such as *persistent* infection, foreign bodies, or ischemia, which are not the factors in acute wounds. Therefore, a method of treating acute wounds, without supporting evidence, is not equal to a method of treating chronic wounds. Applicants argument alone, such as “may be effected”, does not obviate the enablement rejection previously set forth under 35 U.S.C. 112, first paragraph in the absence of factor evidence to support their assertion.

**Conclusion:**

No claim is allowed.

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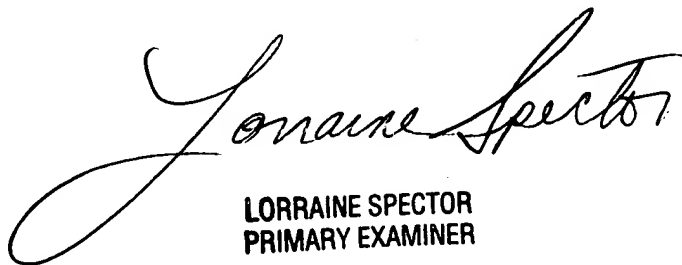
**Advisory Information:**

Any inquiry concerning this communication should be directed to Dong Jiang whose telephone number is 703-305-1345. The examiner can normally be reached on Monday - Friday from 9:00 AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yvonne Eyler, can be reached on (703) 308-6564. The fax phone number for the organization where this application or proceeding is assigned is 703-308-0294.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0196.

DJ  
7/17/01



LORRAINE SPECTOR  
PRIMARY EXAMINER